

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Petstages, Inc., an Illinois corporation,

Plaintiff,

v.

Starmark Pet Products, Inc., a Texas
corporation,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

Plaintiff PETSTAGES, INC. (“Petstages”), by its attorneys, complains against Defendant STARMARK PET PRODUCTS, INC. (“Starmark”) as follows:

PARTIES

1. Petstages is an Illinois corporation having a principal place of business at 333 Skokie Blvd., Suite 104, Northbrook, Illinois 60062.
2. Starmark is a Texas corporation having a principal place of business and a registered agent for service of process at 200 County Road 197, Hutto, Texas 78634.

JURISDICTION AND VENUE

3. This is an action for patent infringement under 35 U.S.C. § 101, et seq. This Court has subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).
4. Venue is proper in this district under 28 U.S.C. § 1391 and 1400(b). On information and belief, Starmark has transacted business within this judicial district and has committed patent infringement within this judicial district. In particular, Starmark’s products,

including its infringing products, such as its “Treat Dispensing Football,” Starmark Model No. SMTDFBL, are sold in retail stores in this judicial district, including numerous PetSmart locations. (Declaration of Richard D. Harris (“Harris Decl.”) (attached as Ex. A), ¶¶ 3, 7; Exs. A-1, A-5.) Furthermore, Starmark’s website states that its products are available “nationwide” through at least five sources, including catalogdog.com, jefferspet.com, jmbrady.com, kingwholesale.com, and retailpets.com. (Harris Decl. ¶ 4; Ex. A-2.) Starmark intentionally directs its products and business into the state of Illinois, advertising on its website that its products are available in Illinois through at least four sources, including General Pet Supply, RFG Distributing/ASC, Siemer Distributors, and Wilson Pet Supply. (Harris Decl. ¶ 5; Ex. A-3.)

U.S. PATENT NO. 8,573,159

5. On November 5, 2013, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,573,159 (“the ’159 Patent”), entitled “Sound-Producing Pet Toy,” to Petstages, Inc. A true and correct copy of the ’159 Patent is attached as Ex. B.

6. Petstages is the sole owner of the ’159 Patent, with all substantive rights in the ’159 Patent, including the right to bring this action and to collect damages awarded in this action.

7. Petstages has marked its products embodying the ’159 Patent, including the Crunchcore™ Bone, by marking the product and/or its packaging with the full identification of the ’159 Patent, on a substantially consistent and continuous basis, in compliance with 35 U.S.C. § 287.

INFRINGEMENT OF U.S. PATENT NO. 8,573,159

8. Petstages repeats and re-alleges the allegations of paragraphs 1-7 as though fully set forth herein.

9. Starmark has made, used, offered to sell, sold, and/or imported, and continues to make, use, offer for sale, sell, and/or import products that infringe one or more claims of the '159 Patent, either literally or under the doctrine of equivalents, including but not limited to the "Treat Dispensing Football," Starmark Model No. SMTDFBL. By doing so, Starmark has directly infringed and continues to directly infringe the '159 Patent.

10. On information and belief, Starmark had actual knowledge of the '159 Patent by virtue of Petstages' marking of its products. Starmark's "Treat Dispensing Football" is similar in size, materials, and overall design to Petstages' Crunchcore™ Bone. The Petstages Crunchcore™ Bone has a resilient outer shell, an elastic core, and a crunchy, crackling member positioned between the outer shell and the elastic core. Starmark's "Treat Dispensing Football," model number SMTDFBL, also has a resilient outer shell, an elastic core, and a crunchy, crackling member positioned between the outer shell and the elastic core. (Harris Decl. ¶¶ 6, 7; Exs. A-4, A-5.) On information and belief, Starmark knowingly copied Petstages' product, which was and is patented and marked in compliance with 35 U.S.C § 287. Starmark's infringement of the '159 Patent was therefore willful.

11. Starmark's infringement of the '159 Patent has injured Petstages and Petstages is entitled to recover damages adequate to compensate it for such infringement in an amount no less than a reasonable royalty, as permitted by 35 U.S.C. § 284.

12. Starmark's infringement of the '159 Patent has caused irreparable harm to Petstages, which has no adequate remedy at law, and will continue to injure Petstages unless and until this Court enters an injunction prohibiting further infringement, specifically, further importation, manufacture, use, offer for sale and/or sale of products falling within the scope of the '159 Patent, including the "Treat Dispensing Football."

PRAYER FOR RELIEF

Petstages requests that the Court find in its favor and against Starmark and the Court grant Petstages the following relief:

- A. Judgment that Starmark has infringed one or more claims of the '159 Patent;
- B. Judgment that Starmark account for and pay to Petstages all damages to, and costs incurred by, Petstages because of Starmark's infringement;
- C. Judgment that Starmark's infringement of the '159 Patent was and continues to be willful;
- D. Treble damages for Starmark's willful infringement;
- E. A finding that this case is exceptional and an award to Petstages of its attorneys' fees and costs as provided by 35 U.S.C. § 285;
- F. A permanent injunction prohibiting Starmark from further infringement of the '159 Patent;
- G. Pre-judgment and post-judgment interest on the damages to Petstages caused by Starmark's infringement; and
- H. Any further relief that this Court deems just and proper.

JURY DEMAND

Petstages demands a trial by jury on all issues so triable.

Respectfully submitted,

PETSTAGES, INC.

Dated: September 28, 2015

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